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Attoorneys for Federal Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

12 STEPHEN MITCHELL,)
13 Plaintiff,)
14 v.)
15 DR. HAROLD NEMETZ, OPEN DOOR)
16 COMMUNITY HEALTH CENTER, U.S.)
17 DEPARTMENT OF HEATH & HUMAN)
SERVICES and DOES 1-20 inclusive)
Defendant.)
No. C 07-5112 CW
**DECLARATION OF CHRISTOPHER
PETERS IN SUPPORT OF FEDERAL
DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

19 I Christopher Peters declare as follows:

20 I. I am currently employed as the Risk Manager for Open Door Community Health
21 Centers. I have been employed by the Open Door Community Health Centers for more than two
22 years. I am familiar with the records maintained by the Open Door Community Health Centers.
23 Moreover, when litigation is anticipated or commenced I become the custodian of records for
24 Open Door Community Health Centers. I have personal knowledge of the facts set forth in this
25 declaration and would be competent to testify to them if called upon to do so.

26 2. Attached hereto as Exhibit A is a true and correct copy of Authorization for
27 Release of Medical Information for the Records of Stephen Mitchell dated October 25, 2002.
28 This authorization is for the release of Stephen Mitchell's x-rays. Per statute Stephen Mitchell's
x-rays had to be ready for release within 15 days or less of the authorization. Open Door

DECLARATION OF CHRISTOPHER PETERS ISO FEDERAL DEFENDANT'S MOTION TO DISMISS
Case No. C 07-5112 CW

1 Community Health Centers prepared x-rays of Mr. Mitchell on September 5, 2001 and
2 September 30, 2002.

3 3. During my investigation of this action, I discovered that in addition to the x-rays
4 prepared by Open Door Community Health Centers, the Health Center also has in its possession
5 post-operative x-rays of Stephen Mitchell taken by Dr. Mojgan Arshi DDS ("Dr. Arshi") after
6 the October 18, 2002 extraction. The x-rays were received in our office on or about October 25,
7 2002. I contacted Dr. Arshi to determine how the post-operative x-rays came to be in our files.
8 Dr. Arshi informed me that she released the x-rays to the patient Stephen Mitchell on or about
9 October 25, 2002. Based upon this information it is my belief that the post-operative x-rays were
10 brought to the Open Door Community Health Centers by Stephen Mitchell on or about October
11 25, 2002.

12 4. Attached hereto as Exhibit B is a true and correct copy of correspondence from
13 Ferman Sims, Esq. to Dr. Wendell Row dated September 14, 2004, this correspondence was
14 forwarded to Open Door Community Health Centers on or about October 7, 2004.

15 5. Attached hereto as Exhibit C is a true and correct copy of correspondence
16 received from the Dental Board of California dated June 27, 2006.

17 6. Attached hereto as Exhibit D is a true and correct copy of the correspondence
18 from the office of Ferman Sims, Esq. to Dr. Harold Nemetz dated July 11, 2005.

19 7. Attached hereto as Exhibit E are true and correct copies of the consent forms
20 signed by Stephen Mitchell on September 5, 2001 and October 18, 2002.

21 I declare under penalty of perjury of the laws of the State of California that the foregoing
22 is true and correct and that this declaration was executed on January 30, 2008 in Arcata,
23 California.

24 By:
25 
26 CHRISTOPHER PETERS

27
28

Manik,
Please scan these docs.
They will be exhibits
to the later Declaration
and filed today -

Wm

Exhibit A

Authorization For Release of Medical Information

<input type="checkbox"/> Humboldt Open Door Clinic 770 Tenth Street, Arcata, CA 95521 tel: 707/826-8610 fax: 707/826-8623	<input type="checkbox"/> Eureka Community Health Center 2412 Buhne Street, Eureka, CA 95501 tel: 707/441-1624 fax: 707/441-1253	<input type="checkbox"/> NorthCountry Clinic Arcata 785 18 th Street, Arcata, CA 95521 tel: 707/822-2481 fax: 707/822-3656
<input type="checkbox"/> NorthCountry Clinic-McKinleyville 1644 Central Avenue, Ste A, McKinleyville tel: 707/839-1909 fax: 707/839-9243	<input type="checkbox"/> Open Door McKinleyville 1644 Central Ave, Ste F, McKinleyville tel: 707/839-3068 fax: 707/839-3827	<input type="checkbox"/> Del Norte Community Health Center 200 A Street, Crescent City, CA tel: 707/465-6925 fax: 707/839-6070
<input type="checkbox"/> Smith River Health Center 110 First Street, Ste B, Smith River, CA 95567 tel: 707/487-0135 fax: 707/487-7064		

Records Re: Stephen Mitchell

(Patient's Name)

Date of Birth: 10-07-57

Patient's Primary Care Provider: _____

Patient's SSN#: 5103-98-2184

I hereby authorize Open Door Community Health Centers to:

Request Records FROM:	
Physician and/or Clinic	
Address	
City, State and Zip	
Phone or Fax	

Send Records TO:	
<u>STEPHEN MITCHELL</u>	
Name of place/person to send records to	
<u>15820 U.S Hwy 101</u>	
Address	
<u>Klamath CA 95548</u>	
City, State and Zip	
<u>(707) 582-1918</u>	
Phone or Fax	

For the following (initial each item authorized for release):

All information regarding the assessment, diagnosis and treatment of _____

All information regarding the care provided from (earliest date) _____ to (latest date) _____

Other all public X rays

Verbal Communication between clinic/Provider (listed above) and my Primary Care Provider (listed above)

To include the following, you must initial and date each item listed below:

Alcohol and drug use/abuse	Initials _____ Date _____	Mental health information	Initials _____ Date _____	HIV Results	Initials _____ Date _____
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This authorization is effective for above requested records only. I understand I have the right to receive a copy of this authorization.

Patient's/Guardian Name (Please print): STEPHEN MITCHELLPatient's/Guardian Signature: Stephen Mitchell Date: _____Witness Signature: Mark Kinompe Date: 10-25-02

If not signed by the patient, please indicate the relationship of the authorizer to the patient:

Parent or Guardian of minor patient (to the extent the minor could not have consented to care)

Guardian or conservator of an incompetent patient

Beneficiary or personal representative of deceased patient

* NOTE: There will be a charge of \$5.00, plus \$0.25 per page, on records copied and given to patients, if copied by clinic staff. There will be a \$10.00 charge plus sales tax and postage, but not more than \$20.00 for ten or more pages billed by the copy service.

ROUTING:

Original with request

Copy to Medical Record

Medical Record #: 7746

Exhibit B

17768

LAW OFFICE OF
FERMAN W. SIMS

Ferman W. Sims, J.D.

William H. Sims, J.D.
(In active)

Attorneys and Counselors at Law

DEL NORTE TITLE BUILDING
519 AH@ STREET
CRESCENT CITY, CALIFORNIA 95531

TELEPHONE: (707) 465-4455
FACSIMILE: (707) 465-4454

September 14, 2004

7-20-05

WENDELL N. ROW, D.D.S.
785 E. Washington Blvd., Suite #8
Crescent City, CA. 95531

Row
707-442-1775
OFF. MAN.
SHIRLEY
EXT # 2
REFOVA ARSHI

Re: STEPHEN MITCHELL

Dear Dr. Row:

This office has been consulted by Mr. Stephen Mitchell regarding dental services previously rendered by Dr. Harold Nemetz at the "A" Street clinic. Mr. Mitchell informs us that the purpose of his visit to Dr. Nimitz was to a fractured tooth removed. He informs us that the wrong tooth was removed in error at that visit.

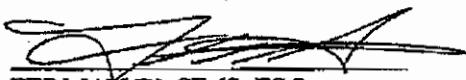
It is our understanding that a fractured tooth was removed surgically in your office. Also, that additional dental work has been diagnosed which may require three separate procedures.

We are enclosing a Medical Authorization executed by Mr. Mitchell. We are requesting that you have your staff provide this office with a copy of Mr. Mitchell's records, including any post-operative reports and recommendations for future corrective dental procedures.

Lastly, we would appreciate receiving a copy of his billing statements to date and amounts owing, if any, along with an estimate of costs for future services and the nature of same.

Please advise our office for costs to obtain said records and reports. If you have any questions, please do not hesitate to contact this office. I remain,

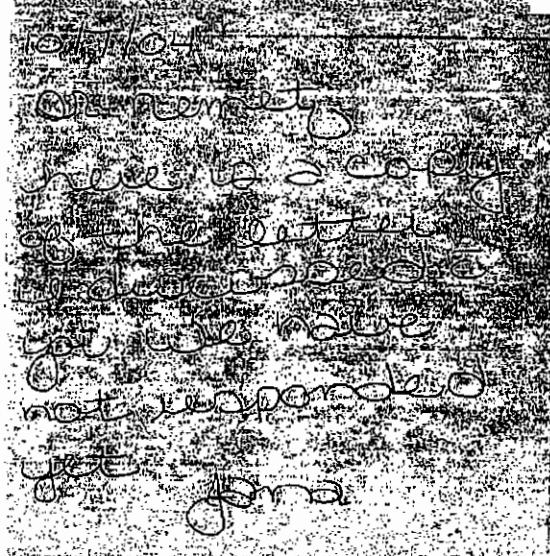
Sincerely,



FERMAN W. SIMS, ESQ

FWS/jfk

Encl.



MEDICAL AUTHORIZATION

Date: September 14, 2004

TO: Dr. Wendell N. Row, D.D.S.
785 E. Washington Blvd. #8
Crescent City, Ca. 95531

RE: STEPHEN MITCHELL

YOU ARE HEREBY AUTHORIZED AND REQUESTED to permit the bearer of this Medical Authorization to view and/or obtain copies of any and all records or information, written or otherwise, which you may have pertaining to the treatment, history, prescription or bills rendered by you to the above-named for any and all injuries, illnesses, disabilities or physical condition(s) and to permit the bearer or any physician, surgeon or medical practitioner appointed by them to discuss said information with you and to examine any x-ray pictures taken of the above-named individual or individuals.

Stephen W. Mitchell

Exhibit C

STATE OF CALIFORNIA - STATE AND CONSUMERS' SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor



DENTAL BOARD OF CALIFORNIA
1432 HOWE AVENUE, SUITE 85, SACRAMENTO, CA 95825-3241
TELEPHONE: (916) 263-2300
FAX: (916) 263-2140



June 27, 2006

Dr. Harold Nemetz
Del Norte Community Health
200 A Street
Crescent City, CA 95531

Re : Stephen Mitchell
Case#: 01-2005-108

Dear Doctor:

The Dental Board of California has concluded its review of the above referenced matter. Due to staffing issues, it has been some time now since this matter has been brought to our attention and we apologize for the delay in reporting the findings.

The Board's dental consultant has thoroughly evaluated all available complaint information, including all pertinent dental records. The dental treatment rendered appears to be a departure from the standard of practice in the dental community. Examination of the records indicates the patient is confused regarding the tooth number in question. Tooth #15 was extracted on 9-5-01. The patient signed consent for the procedure. It does appear that an incorrect tooth was extracted on 10-18-02. You diagnosed tooth #2 with a vertical fracture. A consent form was signed to extract tooth #2. The post-op x-rays reveal that tooth #3 was extracted and tooth #2 was left in tact.

It is beyond the jurisdiction of the Board to determine financial remuneration for damages. The patient apparently has an attorney and this issue will be handled through the legal system.

Although the complaint case will be closed at this time, the Board will retain the information for the time prescribed by law. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeane Ward'.

Jeane Ward
Consumer Services Analyst
(916) 263-2300, Ext. 2305

cc: Stephen Mitchell
c/o Ferman W. Sims
519 H Street

Exhibit D

RECEIVED JUL 18 2005

LAW OFFICE OF
FERMAN W. SIMS

Ferman W. Sims, J.D.

William H. Sims, J.D.
(In active)

Attorneys and Counselors at Law

DEL NORTE TITLE BUILDING
519 "H" STREET
CRESCENT CITY, CALIFORNIA 95531

TELEPHONE: (707) 465-5555
FACSIMILE: (707) 465-4454

July 11, 2005

DR. HAROLD NEMETZ
DEL NORTE COMMUNITY HEALTH CENTER
200 "A" Street
Crescent City, CA. 95531

Personal & Confidential

Re: STEPHEN MITCHELL
Date of Loss: 09-30-02

COPY

Dear Dr. Nemetz:

Please be advised that Mr. Stephen Mitchell has consulted this office relative to injuries he sustained due to the wrongful extraction of a tooth in the upper right side of his mouth on September 20, 2002.

He had sought your services to extract a fractured tooth in the upper side of his mouth but due to your negligence, the fractured tooth #15 was left intact and had to be removed through oral surgery. Mr. Mitchell reports that he subsequently called your office and reported that the wrong tooth had been extracted in that his fractured tooth was still in place. At that time you informed him that the correct tooth was extracted. This office is informed that x-rays were taken by your office which will confirm that the fractured tooth was left intact and the adjoining tooth extracted by you on said date and this fact was concealed by your office.

Mr. Mitchell is informed that further dental services will have to be rendered by reason thereof with an estimated cost in excess of \$15,000.00.

This letter is to provide written notice pursuant to Code of Civil Procedure § 364 the intention to commence legal action on or about October 14, 2005, unless this matter is resolved prior to said date.

Based upon the estimated special damages and the trauma which Mr. Mitchell has experienced

JUL 18 2005

**DR. HAROLD NEMETZ
DEL NORTE COMMUNITY HEALTH CENTER**

July 11, 2005

Re: Stephen Mitchell

and anticipated three (3) separate surgical procedures, that are required to correct this problem, general damages are assessed in the sum of \$45,000.00 for total damages of \$50,000.00..

I trust that you will give this note your immediate attention. I remain,

Sincerely,



FERMAN W. SIMS, ESQ

FWS/jfk

**Cc: Dental Board of the State of California
Client**

JUL 18 2005

Exhibit E

Incomplete removal of tooth fragments

There are times the doctor may decide to leave in a fragment or root of a tooth in order to avoid doing damage to adjacent structures such as nerves, sinuses, etc.

Fracture of the jaw

LOWER TEETH

Numbness

Due to the proximity of roots to the nerve (especially wisdom teeth) it is possible to bruise or damage the nerve with removal of a tooth. This could remain for days, weeks or, very rarely, permanently. The lip, chin and/or tongue could feel numb, tingling or have a burning sensation.

UPPER TEETH

Sinus involvement

Due to the location of the roots (especially the upper back teeth) to the sinus (a normal cavity situated above the back teeth) it is possible an opening may develop from the sinus to the mouth or that a root may be displaced into the sinus. A possible sinus infection and/or permanent opening from the mouth to the sinus could develop and may require medication and/or later surgery to correct.

OTHER ADDITIONAL COMPLICATIONS

CONSENT TO TREATMENT

Patient Name: Stephen mitchelle

I hereby authorize Dr. Lea Abia to perform the following procedure(s):

15 EXT

and to administer the necessary anesthesia. The procedure(s) necessary to treat the condition(s) have been explained to me. I have been informed of possible alternative methods of treatment, if any, along with their risks and benefits. I understand the doctor may discover other or different conditions that require additional or different procedures than those planned. I authorize her/him to perform such other procedures that are advisable in her/his professional judgment. I agree to cooperate completely with the recommendations of the doctor while I am under her/his care, realizing that any lack of same could result in a less than optimum result.

I have read and/or discussed the preceding risks that may occur in connection with this consent to the above surgery.

DATE 9/5/01

PATIENT/LEGALLY RESPONSIBLE PERSON:

Stephen W. Mitchell

WITNESS: Wendy Montanez

Incomplete removal of tooth fragments

There are times the doctor may decide to leave in a fragment or root of a tooth in order to avoid doing damage to adjacent structures such as nerves, sinuses, etc.

Fracture of the jaw

LOWER TEETH

Numbness

Due to the proximity of roots to the nerve (especially wisdom teeth) it is possible to bruise or damage the nerve with removal of a tooth. This could remain for days, weeks or, very rarely, permanently. The lip, chin and/or tongue could feel numb, tingling or have a burning sensation.

UPPER TEETH

Sinus involvement

Due to the location of the roots (especially the upper back teeth) to the sinus (a normal cavity situated above the back teeth) it is possible an opening may develop from the sinus to the mouth or that a root may be displaced into the sinus. A possible sinus infection and/or permanent opening from the mouth to the sinus could develop and may require medication and/or later surgery to correct.

OTHER ADDITIONAL COMPLICATIONS

CONSENT TO TREATMENT

Patient Name: Stephen Mitchell

I hereby authorize Dr. Lea Abia to perform the following procedure(s):

Oral and to administer the necessary anesthesia. The procedure(s) necessary to treat the condition(s) have been explained to me. I have been informed of possible alternative methods of treatment, if any, along with their risks and benefits. I understand the doctor may discover other or different conditions that require additional or different procedures than those planned. I authorize her/him to perform such other procedures that are advisable in her/his professional judgment. I agree to cooperate completely with the recommendations of the doctor while I am under her/his care, realizing that any lack of same could result in a less than optimum result.

I have read and/or discussed the preceding risks that may occur in connection with this consent to the above surgery.

DATE 10-18-02

PATIENT/LEGALLY RESPONSIBLE PERSON: Stephen J. Mitchell

WITNESS: Lea Abia